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BEFORE THE ARIZONA CORPORATION COMMISSION

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Arizona Corporation Commission

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Commissioner

MAY 18 2010

BOB STUMP
Commissioner

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IN THE MATTER OF THE APPLICATION OF)
ARIZONA-AMERICAN WATER COMPANY,)
AN ARIZONA CORPORATION, FOR A)
DETERMINATION OF THE CURRENT FAIR)
VALUE OF ITS UTILITY PLANT AND)
PROPERTY AND FOR INCREASES IN ITS)
RATES AND CHARGES BASED THEREON)
FOR UTILITY SERVICE BY ITS ANTHEM)
WATER DISTRICT AND ITS SUN CITY)
WATER DISTRICT.)

DOCKET NO. W-01303A-09-0343

IN THE MATTER OF THE APPLICATION OF)
ARIZONA-AMERICAN WATER COMPANY,)
AN ARIZONA CORPORATION, FOR A)
DETERMINATION OF THE CURRENT FAIR)
VALUE OF ITS UTILITY PLANT AND)
PROPERTY AND FOR INCREASES IN ITS)
RATES AND CHARGES BASED THEREON)
FOR UTILITY SERVICE BY ITS)
ANTHEM/AGUA FRIA WASTEWATER)
DISTRICT, ITS SUN CITY WASTEWATER)
DISTRICT AND ITS SUN CITY WEST)
WASTEWATER DISTRICT.)

DOCKET NO. SW-01303A-09-0343

PROTECTIVE ORDER

1. (a) Confidential Information. All pre-filed testimony, documents, data, studies and other materials furnished pursuant to any requests for information, subpoenas or other modes of discovery (formal or informal), and including depositions, and other requests for information, that are claimed to be proprietary or confidential (herein referred

1 to as "Confidential Information"), shall be so marked by the providing party by stamping
2 the same with a "Confidential" designation. In addition, all notes or other materials that
3 refer to, derive from, or otherwise contain parts of the Confidential Information will be
4 marked by the receiving party as Confidential Information. Access to and review of
5 Confidential Information shall be strictly controlled by the terms of this Order.

6 A party shall memorialize in writing any Confidential Information that it verbally
7 discloses to Staff or another party within five (5) business days of its verbal disclosure, and
8 the writing shall be marked by the Company with the appropriate designation.

9 A party agrees that it will carefully consider the basis upon which any information is
10 claimed to be trade secret, proprietary, confidential, or otherwise legally protected. A party
11 shall designate as Confidential Information only such information as it may claim in good
12 faith to be legally protected. Where only part of a document, or only a part of an
13 informational submittal may reasonably be considered to be trade secret, proprietary,
14 confidential, or otherwise legally protected, a party shall designate only that part of such
15 information submittal as Confidential Information under this Agreement. Information that
16 is publicly available from any other source shall not be claimed as Confidential Information
17 under this Agreement. Any party shall have the right to challenge at any time a party's
18 designation of any document or portion thereof as "Confidential" in accordance with the
19 procedures described in Section 6 of this Agreement.

20 (b) **Use of Confidential Information - Proceeding.** All persons who may
21 be entitled to review, or who are afforded access to any Confidential Information by reason
22 of this Order shall neither use nor disclose the Confidential Information for purposes of
23 business or competition, or any purpose other than the purpose of preparation for and
24 conduct of proceedings in the above-captioned docket and all subsequent appeals, and shall
25 keep the Confidential Information secure as confidential or proprietary information and in
26 accordance with the purposes, intent and requirements of this Order.

1 (c) **Persons Entitled to Review.** Each party that receives Confidential
2 Information pursuant to this Order must limit access to such Confidential Information to (1)
3 attorneys employed or retained by the party in these proceedings and the attorneys' staff;
4 (2) experts, consultants and advisors who need access to the material to assist the party in
5 these proceedings; (3) only those employees or officers of the party who are directly
6 involved in these proceedings, provided that counsel for the party represents that no such
7 employee is engaged in the sale or marketing of that party's products or services. In
8 addition, access to Confidential Information may be provided to Commissioners and all
9 Commission Administrative Law Judges, and Commission advisory staff members and
10 employees of the Commission to whom disclosure is necessary. Where Commission Staff
11 acts as an advocate in a trial or adversarial role, disclosure of both Confidential Information
12 to Staff members and consultants employed by the Staff shall be under the same terms and
13 conditions as described herein for parties.

14 (d) **Nondisclosure Agreement.** Any party, person, or entity that receives
15 Confidential Information pursuant to this Order shall not disclose such Confidential
16 Information to any person, except persons who are described in section 1(c) above and who
17 have signed a nondisclosure agreement in the form which is attached hereto and
18 incorporated herein as Exhibit "A". Court reporters shall also be required to sign an Exhibit
19 "A" and comply with terms of this Order. Commissioners, Administrative Law Judges, and
20 their respective Staff members are not required to sign an Exhibit "A" form.

21 The nondisclosure agreement (Exhibit "A") shall require the person(s) to whom
22 disclosure is to be made to read a copy of this Protective Order and to certify in writing that
23 they have reviewed the same and have consented to be bound by its terms. The agreement
24 shall contain the signatory's full name, employer, job title and job description, business
25 address and the name of the party with whom the signatory is associated. Such agreement
26 shall be delivered to counsel for the providing party before disclosure is made, and if no

1 objection thereto is registered to the Commission within three (3) business days, then
2 disclosure shall follow. An attorney who makes Confidential Information available to any
3 person listed in subsection (c) above shall be responsible for having each person execute an
4 original Exhibit "A" and a copy of all such signed Exhibit "A's" shall be circulated to all
5 other counsel of record promptly after execution.

6 2. (a) **Notes.** Limited notes regarding Confidential Information may be
7 taken by counsel and experts for the express purpose of preparing pleadings, cross-
8 examinations, briefs, motions and argument in connection with this proceeding, or in the
9 case of persons designated in section 1(c) of this Protective Order, to prepare for
10 participation in this proceeding. Such notes shall then be treated as Confidential
11 Information for purposes of this Order, and shall be destroyed after the final settlement or
12 conclusion of these proceedings in accordance with subsection 2(b) below.

13 (b) **Return.** All notes, to the extent they contain Confidential Information
14 shall be destroyed after the final settlement or conclusion of these proceedings. The party
15 destroying such Confidential Information shall advise the providing party of that fact within
16 a reasonable time from the date of destruction.

17 Any party providing either Confidential Information may object to the designation
18 of any individual as a person who may review Confidential Information. Such objection
19 shall be made in writing to counsel submitting the challenged individual's Exhibit "A"
20 within three (3) business days after receiving the challenged individual's signed Exhibit
21 "A". Any such objection must demonstrate good cause to exclude the challenged individual
22 from the review of the Confidential Information. Written response to any objection shall be
23 made within three (3) business days after receipt of an objection. If, after receiving a
24 written response to a party's objection, the objecting party still objects to disclosure of
25 Confidential Information to the challenged individual, the Commission shall determine
26 whether Confidential Information must be disclosed to the challenged individual.

1 Execution of this Agreement by the parties and performance of their obligations
2 hereunder shall not result in waiver of any claim, issue, or dispute concerning the trade
3 secret, proprietary, confidential, or legally protected nature of the Confidential Information
4 provided.

5 4. **Objections to Admissibility.** The furnishing of any document, data, study or
6 other materials pursuant to this Protective Order shall in no way limit the right of the
7 providing party to object to its relevance or admissibility in proceedings before this
8 Commission.

9 6. **Challenge to Confidentiality.** This Order establishes a procedure for the
10 expeditious handling of information that a party claims is Confidential. It shall not be
11 construed as an agreement or ruling on the confidentiality of any document. Any party may
12 challenge the characterization of any information, document, data or study claimed by the
13 providing party to be confidential in the following manner:

- 14 (a) A party seeking to challenge the confidentiality of any materials pursuant to
15 this Order shall first contact counsel for the providing party and attempt to
16 resolve any differences by stipulation;
- 17 (b) In the event that the parties cannot agree as to the character of the information
18 challenged, any party challenging the confidentiality shall do so by
19 appropriate pleading. This pleading shall:
- 20 (1) Designate the document, transcript or other material challenged in a
21 manner that will specifically isolate the challenged material from other
22 material claimed as confidential; and
- 23 (2) State with specificity the grounds upon which the documents,
24 transcript or other material are deemed to be non-confidential by the
25 challenging party.
- 26 (c) A ruling on the confidentiality of the challenged information, document, data
or study shall be made by an Administrative Law Judge after proceedings in camera, which shall be conducted under circumstances such that only those
persons duly authorized hereunder to have access to such confidential
materials shall be present. This hearing shall commence no earlier than five
(5) business days after service on the providing party of the pleading required
by subsection 6(b) above.
- (d) The record of said in camera hearing shall be marked "CONFIDENTIAL. -
SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS.W-01303A-09-

0343 and SW-01303A-09-0343 ". Court reporter notes of such hearing shall be transcribed only upon agreement by the parties or Order of the Administrative Law Judge and in that event shall be separately bound, segregated, sealed, and withheld from inspection by any person not bound by the terms of this Order.

- (e) In the event that the Administrative Law Judge should rule that any information, document, data or study should be removed from the restrictions imposed by this Order, no party shall disclose such information, document, data or study or use it in the public record for five (5) business days unless authorized by the providing party to do so. The provisions of this subsection are intended to enable the providing party to seek a stay or other relief from an order removing the restriction of this Order from materials claimed by the providing party to be confidential.

7. (a) **Receipt into Evidence.** Provision is hereby made for receipt into evidence in his proceeding materials claimed to be confidential in the following manner:

- (1) Prior to the use of or substantive reference to any Confidential Information, the parties intending to use such Information shall make that intention known to the providing party.
- (2) The requesting party and the providing party shall make a good-faith effort to reach an agreement so that the Information can be used in a manner which will not reveal its confidential or proprietary nature.
- (3) If such efforts fail, the providing party shall separately identify which portions, if any, of the documents to be offered or referenced shall be placed in a sealed record.
- (4) Only one (1) copy of the document designated by the providing party to be placed in sealed record shall be made.
- (5) The copy of the documents to be placed in the sealed record shall be tendered by counsel for the providing party to the Commission, and maintained in accordance with the terms of this Order.

(b) **Seal.** While in the custody of the Commission, materials containing Confidential Information shall be marked "CONFIDENTIAL - SUBJECT TO PROTECTIVE ORDER IN DOCKET NOS. W-01303A-09-0343 and SW-01303A-09-0343" and shall not be examined by any person except under the conditions set forth in this Order.

(c) **In Camera Hearing.** Any Confidential Information that must be orally disclosed to be placed in the sealed record in this proceeding shall be offered in an in

1 camera hearing, attended only by persons authorized to have access to the information
2 under this Order. Similarly, any cross-examination on or substantive reference to
3 Confidential Information (or that portion of the record containing Confidential Information
4 or references thereto) shall be received in an in camera hearing, and shall be marked and
5 treated as provided herein.

6 (d) Access to Record. Access to sealed testimony, records and
7 information shall be limited to the Administrative Law Judge, Commissioners, and their
8 respective staffs, and persons who are entitled to review Confidential Information pursuant
9 to subsection 1(c) above and have signed Exhibit "A", unless such information is released
10 from the restrictions of this Order either through agreement of the parties or after notice to
11 the parties and hearing, pursuant to the ruling of an Administrative Law Judge, the order of
12 the Commission and/or final order of a court having final jurisdiction.

13 (e) Appeal Subsequent Proceedings. Sealed portions of the record in this
14 proceeding may be forwarded to any court of competent jurisdiction for purposes of an
15 appeal but under seal as designated herein for the information and use of the court or the
16 FCC. If a portion of the record is forwarded to a court or the providing party shall be
17 notified which portion of the sealed record has been designated by the appealing party as
18 necessary to the record on appeal.

19 (f) Judicial Proceedings Related to Nonparty's Request for
20 Disclosure.

21 Where the Commission, ALJ, or Staff determines that disclosure is not appropriate, a party
22 as the real party in interest shall join as a co-defendant in any judicial action brought
23 against the Commission and/or Commissioners by the party seeking disclosure of the
24 information, unless the party is already specifically named in the action. Each such party
25 also agrees to indemnify and hold the Commission harmless from any assessment of
26

1 expenses, attorneys' fees, or damages resulting from the Commission's denial of access to
2 the information found to be non-confidential.

3 In the event that the Commission becomes legally compelled (by deposition,
4 interrogatory request for documents, subpoena, civil investigative demand, or similar
5 process) to disclose any of the Confidential Information, the Commission shall provide the
6 affected party with prompt written notice of such requirement so that said party may seek
7 an appropriate remedy and/or waive compliance.

8 (g) **Return.** Unless otherwise ordered, Confidential Information,
9 including transcripts of any depositions to which a claim of confidentiality is made, shall
10 remain under seal, shall continue to be subject to the protective requirements of this Order,
11 and shall, at the providing party's discretion, be returned to counsel for the providing party,
12 or destroyed by the receiving party, within thirty (30) days after final settlement or
13 conclusion of these proceedings. If the providing party elects to have Confidential
14 Information destroyed rather than returned, counsel for the receiving party shall verify in
15 writing that the material has in fact been destroyed.

16 8. **Use in Pleadings.** Where references to Confidential Information in the sealed
17 record or with the providing party is required in pleadings, briefs, arguments or motions
18 (except as provided in section 6), it shall be by citation of title or exhibit number or some
19 other description that will not disclose the substantive Confidential Information contained
20 therein. Any use of or substantive references to Confidential Information shall be placed in
21 a separate section of the pleading or brief and submitted to the Administrative Law Judge
22 or the Commission under seal. This sealed section shall be served only on counsel of record
23 and parties of record who have signed the nondisclosure agreement set forth in Exhibit "A."
24 All of the restrictions afforded by this Order apply to materials prepared and distributed
25 under this section.
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1 9. Summary of Record. If deemed necessary by the Commission, the providing
2 party shall prepare a written summary of the Confidential Information referred to in the
3 Order to be placed in the public record.

4 10. Breach of Agreement. Company, in any legal action or complaint that it files
5 in any court alleging breach of this Agreement shall, at the written request of the
6 Commission, name the Arizona Corporation Commission as a Defendant therein.

7 11. Non-Termination. The provisions of this Agreement shall not terminate at
8 the conclusion of this proceeding.

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EXHIBIT A
CONFIDENTIAL INFORMATION

I have read the foregoing Protective Order dated 5/17 /, 2010, in Docket Nos. W-01303A-09-0343 and SW-01303A-09-0343 and agree to be bound by the terms and conditions of this Order.

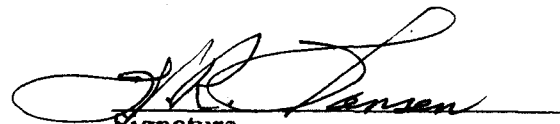
W. R. Hansen
Name

Retired
Employer

Job title and Job Description

Business Address

Self
Party


Signature

5/17/2010
Date